



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Skolnik Industries, Inc.
File: B-237250; B-237251
Date: November 14, 1989

DIGEST

1. Protest filed more than 10 working days after the protester received notification of denial of its agency-level protest is untimely.
2. Protest concerning an alleged apparent solicitation impropriety must be filed prior to bid opening to be timely.

DECISION

Skolnik Industries, Inc. (Skolnik), protests the rejection of its low bids as nonresponsive under invitations for bids (IFB) Nos. DLA400-89-B-2062 and DLA400-89-B-3460, issued by the Defense Logistic Agency (DLA) for recovery drums.

We dismiss the protests as untimely.

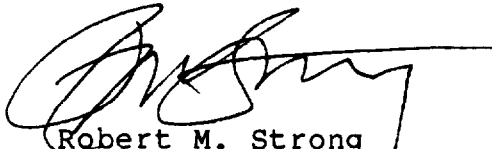
DLA rejected Skolnik's bid under IFB No. DLA400-89-B-2062, because Skolnik indicated that its option prices were equal to its base price as adjusted by the IFB's economic price adjustment (EPA) clause. However, the solicitation did not contain an EPA clause. Therefore, by letter dated June 14, 1989, DLA notified Skolnik that its bid was rejected as nonresponsive. Skolnik protested to the agency by letter dated June 20, and the DLA contracting officer denied this protest by telephone call on August 15. Skolnik's protests regarding both solicitations were filed in our Office on October 2.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1989), provide that when a protest is initially filed with a procuring agency, any subsequent protest to our Office must be filed within 10 working days of initial adverse agency action or inaction that is prejudicial to the position taken in the protest. 4 C.F.R. § 21.0(f). We have recognized that oral notification of the denial of an agency-level protest is sufficient to start the 10 working-day period

running. Discount Mach. & Equip., Inc.--Reconsideration,
B-233541.2, Apr. 3, 1989, 89-1 CPD ¶ 341. Accordingly,
Skolnik's protest in this regard is untimely, since it was
filed in our Office more than a month and a half after
Skolnik was notified that its agency-level protest had been
denied.

With respect to IFB No. DLA400-89-B-3460, bid opening
occurred on June 6. Skolnik's bid was determined to be
nonresponsive, and the solicitation was canceled for
"failure to obtain coverage," on September 22. Skolnik's
bid was found nonresponsive because it failed to price all
of the option quantities as required by the IFB. Skolnik
protests that the solicitation was ambiguous with respect to
the option pricing requirement because it contained
unidentified "misleading questions." This protest concerns
an alleged apparent solicitation impropriety which, under
4 C.F.R. § 21.2(a)(1), must be filed either with the agency
or in our Office prior to the time set for bid opening.
Turbo Mechanical Inc., B-232483, Jan. 9, 1989, 89-1 CPD
¶ 14. Accordingly, Skolnik's protest in this regard, which
was first filed in our Office after bid opening, is not for
consideration on the merits.

The protests are dismissed.


Robert M. Strong
Associate General Counsel